

April 5, 2023

By Electronic Delivery

Honorable Kimberly D. Bose, Secretary
Federal Energy Regulatory Commission
888 First Street, NE
Washington, DC 20426

Re: Filing of an Unexecuted Engineering, Procurement, and Construction Agreement for the Ticonderoga Solar Project Among the New York Independent System Operator, Inc., New York State Electric & Gas Corporation, ELP Ticonderoga Solar LLC, and Niagara Mohawk Power Corporation d/b/a National Grid; Request for Waiver of 60-Day Notice Period; Docket No. ER23-____-000

Dear Ms. Bose:

Pursuant to Section 205 of the Federal Power Act¹ and Section 35.13 of the Commission's regulations,² the New York Independent System Operator, Inc. ("NYISO") and New York State Electric & Gas Corporation ("NYSEG") (together, the "Joint Filing Parties") hereby tender for filing an unexecuted Engineering, Procurement, and Construction Agreement in connection with the Ticonderoga Solar project (NYISO Queue No. 734) ("EPC Agreement"). The EPC Agreement is among the NYISO, NYSEG, as the Affected System Operator, ELP Ticonderoga Solar LLC ("Ticonderoga"), as the Interconnection Customer, and Niagara Mohawk Power Corporation d/b/a National Grid ("National Grid").³ The EPC Agreement is labeled as Service Agreement No. 2764 under the NYISO's Open Access Transmission Tariff ("OATT").

Ticonderoga is developing a 20 MW solar generating facility (the "Small Generating Facility") in the town of Ticonderoga, New York that is interconnecting with National Grid's system. The facilities study for the Small Generating Facility determined that certain upgrades on NYSEG's system are required to reliably interconnect the Small Generating Facility to the New York State Transmission System ("Affected System Upgrade Facilities"). The parties have developed the EPC Agreement to govern the rates, terms, and conditions regarding the engineering, procurement, and construction of the Affected System Upgrade Facilities. Consistent with the requirements in the NYISO's OATT,⁴ the EPC Agreement is based on the NYISO's *pro forma* Standard Large Generator Interconnection Agreement ("Pro Forma LGIA") contained in Attachment X to the OATT and conforms to the Pro Formal LGIA, as modified to address only the engineering, procurement, and construction of the Affected System Upgrade Facilities as described in Part II of this letter.

¹ 16 U.S.C. § 824d.

² 18 C.F.R. § 35.13 (2022).

³ Capitalized terms that are not otherwise defined in this filing letter shall have the meaning specified in Attachments S, X, and Z of the NYISO OATT, and if not defined therein, the NYISO OATT or NYISO Market Administration and Control Area Services Tariff ("Services Tariff").

⁴ See OATT Attach. X § 30.3.5.

Ticonderoga has requested that the NYISO and NYSEG file the EPC Agreement on an unexecuted basis for the reasons described in Part III below. The NYISO has worked together with NYSEG and Ticonderoga to accurately describe in Part III of this letter the dispute underlying Ticonderoga's request that the EPC Agreement be filed unexecuted. The NYISO expects that NYSEG and Ticonderoga will separately file comments in this proceeding to provide their positions concerning this dispute.

Finally, as described in Part IV of this letter, the Joint Filing Parties respectfully request a waiver of the Commission's prior notice requirements⁵ to make the unexecuted Agreement effective as of April 6, 2023, which is the date one day after the date of this filing. Consistent with the requirements for unexecuted interconnection agreements established in the OATT, the NYISO, NYSEG, Ticonderoga, and National Grid shall comply with the terms and conditions of the unexecuted EPC Agreement, subject to modification by the Commission.⁶

I. BACKGROUND

The Small Generating Facility will interconnect to certain facilities of National Grid that are part of the New York State Transmission System. The NYISO, National Grid, and Ticonderoga fully executed a Small Generator Interconnection Agreement for the Small Generating Facility on March 15, 2022. The NYISO and National Grid jointly filed, and the Commission accepted, this Small Generator Interconnection Agreement with OATT Service Agreement No. 2666.⁷

The facilities study for the Small Generating Facility also identified certain Affected System Upgrade Facilities that are required on the Affected System owned by NYSEG – the Affected System Operator – to reliably interconnect the Small Generating Facility to the New York State Transmission System. Ticonderoga's project is a Small Generating Facility subject to the Small Generator Interconnection Procedures ("SGIP") in Attachment Z of the OATT. The SGIP lacks specific provisions for implementing upgrades identified for an Affected System. As directed by the Commission, the NYISO uses the provisions of its Large Facility Interconnection Procedures ("LFIP") in Attachment X of the OATT as guidance for interpreting and implementing the SGIP where, as here, the SGIP lacks specific provisions.⁸ Section 30.3.5 of the LFIP establishes the requirements for the NYISO and Developer to enter into an engineering, procurement, and construction agreement with an Affected System Operator for upgrades on the Affected System required to reliably interconnect a generating facility.⁹

⁵ See *Prior Notice and Filing Requirements Under Part II of the Federal Power Act*, 64 FERC ¶ 61,139, clarified, 65 FERC ¶ 61,081 (1993).

⁶ See OATT Attach. X § 30.11.5.

⁷ See *New York Independent System Operator, Inc. and Niagara Mohawk Power Corporation d/b/a National Grid*, Letter Order, Docket No. ER22-1489-000 (May 16, 2022).

⁸ See *New York Independent System Operator, Inc.*, 162 FERC ¶ 61,061 at P 26 (2018); see also Order No. 2006 at PP 47-48, 59.

⁹ See OATT Attach. X § 30.3.5. ("Upon completion of a Class Year Study in which a Developer accepts its Project Cost Allocation for System Upgrade Facilities and/or System Deliverability Upgrades and funds or commits to fund such upgrades as required by Attachment S, the Developer and Affected System Operator(s) will cooperate with the ISO in development of an Engineering, Procurement and Construction to provide for the engineering, procurement and construction of the System Upgrade Facilities and/or System Deliverability Upgrades on the Affected System.")

Consistent with the requirements in Section 30.3.5 of the OATT, and the NYISO's existing practice for engineering, procurement, and construction agreements as accepted by the Commission,¹⁰ the NYISO developed the EPC Agreement using the Pro Forma LGIA, as modified to address only the engineering, procurement, and construction of the Affected System Upgrade Facilities.¹¹ The EPC Agreement will govern the rates, terms, and conditions pursuant to which Ticonderoga will engineer, procure, and construct the Affected System Upgrade Facilities on NYSEG's system ("EPC Services"). The NYISO, NYSEG, Ticonderoga, and National Grid are in agreement with the terms of the EPC Agreement with the limited exception of the disputed issue described in Part III below.

II. DESCRIPTION OF THE EPC AGREEMENT

Consistent with Section 30.3.5 of Attachment X and NYISO practice, as accepted by the Commission, the EPC Agreement is based on, and conforms to, the Pro Forma LGIA, except as modified to address only the engineering, procurement, and construction of the Affected System Upgrade Facilities and to address certain unique circumstances. In particular, the Pro Forma LGIA has been modified: (i) to reflect the different purpose of the EPC Agreement, (ii) to reflect that the EPC Agreement concerns an Affected System Operator and System Upgrade Facilities on its Affected System; (iii) to allocate the parties' responsibilities for the performance of the EPC Services and payment for such performance, and (iv) to set forth the scope of work, cost estimate, and milestone schedule for the construction of the Affected System Upgrade Facilities.

The EPC Agreement varies from the Pro Forma LGIA primarily as follows:

- The EPC Agreement concerns the Affected System Upgrade Facilities that will be constructed by Ticonderoga and owned, operated, and maintained by NYSEG as the Affected System Operator. For these reasons, the EPC Agreement has been modified from the Pro Forma LGIA to reflect the different purpose of the agreement and the different terminology (*e.g.*, Affected System Operator, Affected System Upgrade Facilities). In addition, as the Ticonderoga Solar project is a Small Generating Facility subject to the NYISO's Small Generator Interconnection Procedures, the EPC Agreement has been modified from the Pro Forma LGIA to reflect the defined terms used in the SGIP (*e.g.*, "Interconnection Customer" in place of "Developer").
- The EPC Agreement addresses the performance of the EPC Services and will terminate upon the later of the completion of the EPC Services and the payment of related invoices and release or refund of any remaining Security.¹² For this reason, the EPC Agreement does not

¹⁰ See, *e.g.*, *New York Independent System Operator, et al.*, Letter Order, Docket No. ER22-1007-000 (Apr. 8, 2022) (accepting an EPC Agreement among the NYISO, Interconnection Customers, and Affected System Operator to construct upgrades required for an Affected System in connection with Small Generating Facilities); *New York Independent System Operator, Inc. and New York State Electric & Gas Corporation*, Letter Order, Docket No. ER15-2079-000 (August 5, 2015) (accepting an EPC Agreement among the NYISO, an Affected Transmission Owner, and Developer based on the Pro Forma LGIA).

¹¹ See OATT Attach. X § 30.3.5. ("The Engineering, Procurement and Construction Agreement shall be consistent with the NYISO's Commission-approved Standard Large Generator Interconnection Agreement located in Appendix 2 to Attachment X of the OATT, modified to address only the engineering, procurement and construction of the System Upgrade Facilities and/or System Deliverability Upgrades.")

¹² See EPC Agreement Article 2.2.

include the operating and maintenance requirements from the Pro Forma LGIA. The Affected System Upgrade Facilities will be incorporated into NYSEG's system and operated and maintained by NYSEG in the same manner as the rest of its system.

- Ticonderoga will be responsible for all of the work to design, construct, install, and place in service the Affected System Upgrade Facilities. For this reason, the EPC Agreement does not include the requirements in the Pro Forma LGIA for a Developer's responsibilities concerning a Large Generating Facility or its options or responsibilities to perform work concerning Attachment Facilities or Stand Alone System Upgrade Facilities. Rather, the EPC Agreement describes Ticonderoga's responsibilities with respect to the EPC Services.¹³
- The work on NYSEG's system in connection with the Small Generating Facility will have to be aligned with the related work on National Grid's system. National Grid has executed the EPC Agreement for the limited purpose of reviewing the protection changes that will be performed under the agreement that impact National Grid's 115 kV system.¹⁴
- NYSEG and Ticonderoga agreed to modify the tax provisions from the Pro Forma LGIA (as located in Article 3.11 of the EPC Agreement), so that the provisions apply to Affected System Upgrade Facilities, rather than to a Large Generating Facility and related Attachment Facilities and Upgrades.
- The Parties agreed to modify the insurance rules (as located in Article 13.3 of the EPC Agreement) to align with the insurance requirements applicable to a Small Generating Facility under the Small Generator Interconnection Agreement in place of the insurance requirements applicable to a Large Generating Facility under the Pro Forma LGIA.
- The EPC Agreement does not include the provisions of the Pro Forma LGIA that govern the NYISO's provision of interconnection service to a Developer, which is addressed under Ticonderoga's Small Generator Interconnection Agreement.
- As the parties have already completed the interconnection studies necessary to determine the impact of the interconnection of the Small Generating Facility, the EPC Agreement does not include the provisions of the Pro Forma LGIA that address such studies.
- The EPC Agreement also includes minor clean-ups, updated cross-references, and revisions agreed upon among all of the parties that are consistent with the terms of the EPC Agreement.

III. DISPUTED ISSUE

Ticonderoga has agreed with NYSEG to construct the Affected System Upgrade Facilities on NYSEG's transmission system and is responsible for the costs of the engineering, procurement, and construction of such facilities. Consistent with the requirements in Article 5.2 of the Pro Forma LGIA for instances in which a Developer will construct the Connecting Transmission Owner's

¹³ See EPC Agreement Article 3.

¹⁴ See EPC Agreement Preamble, Articles 3.2, 3.5, 3.6, 4.2, 10, and 19.

facilities identified for the interconnection of its project, Article 3.2 of the EPC Agreement establishes the requirements for Ticonderoga's construction of the Affected System Upgrade Facilities on NYSEG's system. Pursuant to Article 3.2.12 of the EPC Agreement (which mirrors Article 5.2.12 of the Pro Forma LGIA), Ticonderoga is responsible for paying NYSEG an agreed upon dollar amount for NYSEG's oversight of the work being performed by Ticonderoga. In particular, Article 3.2.12 provides:

3.2.12 Interconnection Customer shall pay the Affected System Operator the agreed upon amount of [\$ PLACEHOLDER] for the Affected System Operator to execute the responsibilities enumerated to Affected System Operator under Article 3.2. Affected System Operator shall invoice Interconnection Customer for this total amount to be divided on a monthly basis pursuant to Article 8.

In describing the dollar amount that should be included in the related Pro Forma LGIA oversight costs provision, the Commission has indicated that "We expect the transmission provider and interconnection customer to negotiate this amount and clearly state it in the LGIA."¹⁵

Ticonderoga has indicated that it does not object to paying NYSEG's oversight costs. However, Ticonderoga and NYSEG disagree concerning the dollar amount for such oversight costs that should be included in the placeholder for Article 3.2.12 and have been unable to come to an agreed-upon figure.¹⁶

The NYISO's OATT does not establish specific requirements for the NYISO's filing of unexecuted engineering, procurement, and construction agreements. The NYISO, therefore, is filing this unexecuted agreement consistent with its tariff requirements for filing unexecuted interconnection agreements.¹⁷ Consistent with these requirements, the NYISO is responsible for drafting the portion of the unexecuted agreement that is in dispute.¹⁸

The NYISO's interconnection studies for Small Generating Facilities in the SGIP do not identify a cost estimate for a transmission owner's oversight costs. Rather, the NYISO's interconnection studies determine cost estimates for interconnection facilities and upgrades based on the assumption that the transmission owner will perform the work on its own system. The determination of which party will construct such interconnection facilities and upgrades is made by the transmission owner and developer after the NYISO's completion of the interconnection studies. In this instance, the facilities study for the Affected System work for the Small Generating Facility (dated March 2, 2021) determined the cost estimate for the Affected System Operator's total work concerning the Affected System Upgrade Facilities to be \$795,689. The NYISO does not perform

¹⁵ *Reform of Generator Interconnection Procedures and Agreements*, Order No. 845-A, Order on Rehearing and Clarification, 166 FERC ¶ 61,137 at P 75 (2019). The Commission's *pro forma* interconnection procedures and agreements use the term "transmission provider," which responsibilities are divided in New York between the NYISO and New York Transmission Owners. For purposes of the oversight cost provision, the New York Transmission Owner is the transmission provider eligible to recover oversight costs.

¹⁶ This amount will also be used to determine the amount of security that Ticonderoga will provide NYSEG as set forth in Section 5 of Appendix A to this Agreement. As set forth in Section 5 of Appendix A, the parties agreed to amend the EPC Agreement to incorporate the amount and form of security after the oversight cost amount is determined.

¹⁷ See OATT Attach. X § 30.11.3.

¹⁸ See *id.*

additional studies or re-studies to determine the transmission owner's oversight costs amount if the developer will perform some or all of this work.

As the NYISO does not separately develop cost estimate for transmission owner's oversight costs, the NYISO has inserted in the placeholder in Article 3.2.12 the amount of \$961,207 for NYSEG's oversight costs. This amount is the most recent estimate provided by NYSEG for its oversight costs based on an assessment it conducted in September 2022. Ticonderoga has not agreed to this amount, which amount is the subject of the current dispute. The NYISO did not determine this cost estimate or participate in the development of this estimate and, therefore, does not take a position concerning the justness and reasonableness of this amount. Consistent with the NYISO's tariff rules for filing unexecuted interconnection agreements, NYSEG will provide its comments concerning the disputed provision, which it will submit in a separate filing.¹⁹ The NYISO expects that Ticonderoga will also provide its position on the cost estimate in a separate filing in this proceeding.

IV. PROPOSED EFFECTIVE DATE AND REQUEST FOR WAIVER OF THE 60-DAY NOTICE PERIOD

The Joint Filing Parties request an effective date of April 6, 2023 for the Agreement, which is the date one day after the date of this filing. The Joint Filing Parties respectfully request that the Commission waive its prior notice requirement to permit the requested effective date. The Commission has previously permitted interconnection agreements to become effective upon execution or, in the case of an unexecuted interconnection agreement, on the day the date after filing.²⁰

¹⁹ See *id.*

²⁰ See, e.g., *New York Independent System Operator, Inc.*, 179 FERC ¶ 61,047 (2022) (accepting an unexecuted interconnection agreement effective the date after filing); *New York Independent System Operator, Inc. and Consolidated Edison Company of New York, Inc.*, Letter Order, Docket No. ER08-618-000 (April 29, 2008) (accepting an unexecuted interconnection agreement effective as of date of filing as requested by the parties); see also, e.g., *New York Independent System Operator, Inc. and New York State Electric & Gas Corporation*, Letter Order, Docket No. ER11-2953-000 (April 7, 2011) (accepting interconnection agreement effective as of date of execution as requested by the parties).

V. COMMUNICATIONS AND CORRESPONDENCE

All communications and service in this proceeding should be directed to:

For the NYISO²¹

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VI. DOCUMENTS SUBMITTED

The NYISO submits the following documents with this filing letter:

- A clean version of the EPC Agreement (Attachment I); and
- A blacklined version of the EPC Agreement showing the changes from the Pro Forma LGIA (Attachment II).

²¹ The NYISO respectfully requests waiver of 18 C.F.R. § 385.203(b)(3) (2022) to permit service on counsel in both Washington, D.C. and Richmond, VA.

VII. SERVICE

A complete copy of this filing will be posted on the NYISO's website at www.nyiso.com. The NYISO will send an electronic link to this filing to the official representative of each of its customers and to each participant on its stakeholder committees. In addition, the NYISO will send an electronic copy of this filing to the New York State Public Service Commission and to the New Jersey Board of Public Utilities.

VIII. CONCLUSION

Wherefore, the Joint Filing Parties respectfully request that the Commission accept the EPC Agreement for filing with an effective date of April 6, 2023.

Respectfully submitted,

/s/ Sara B. Keegan

Sara B. Keegan

New York Independent System Operator, Inc.

/s/ Michael J. Messonnier, Jr.

Michael J. Messonnier Jr.

Hunton Andrews Kurth LLP

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/s/ Jeffrey A. Rosenbloom

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